THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION NO : 24946 of 2005

-

Dated:25.11.2005

Between:

V.P.R.Constructions, rep. by its Managing Partner Venati

Paramdhama Reddy,S/o.Subramanyam Reddy
R/o. Sullur Street Sullurpet,

Nellore District.

..... PETITIONER

AND

The Chief Engineer Pranchayat Raj, Government of Andhra Pradesh,

Hyderabad, and another.

.....RESPONDENTS

THE HON'BLE SRI JUSTICE V.V.S.RAO

-

WRIT PETITION No.24946 of 2005

-

ORDER:

-

The petitioner is a partnership firm. It was registered as
Class I Contractor in 1993 and claims to have experience in executing works relating to roads and buildings. The second respondent herein floated a tender on e-procurement platform for the work of providing BT surface to three road works in P.R.Division, Gudur, costing
Rs.101.20 Lakhs. As per the tender notification, the last date for submission of the tenders in two parts i.e., technical bid and price bid is 17.09.2005. The petitioner submitted the tenders. During the scrutiny of prequalification/technical bids it was found that the petitioner did not upload VAT Certificate, as required by the tender conditions. Therefore, the petitioner's technical bid was rejected and his price bid was not considered. Therefore, the petitioner invoked the jurisdiction of this Court under Article 226 of the Constitution of India. The petitioner seeks a writ of

Mandamus declaring the action of the second respondent in not considering the tender bids submitted by the petitioner as illegal and arbitrary, and for a consequential direction to the second respondent to consider the tender bids submitted by the petitioner.

The learned Counsel for the petitioner submits that as per the tender conditions, a Contractor is required to submit either VAT certificate or CST document. The petitioner has uploaded CST document and therefore, the rejection of the tender on the ground that the petitioner did not upload VAT Certificate is illegal and arbitrary. He further submits that when the second respondent rejected the prequalification/technical bid, the petitioner approached the first respondent for redressal, who by memo dated 10.11.2005, requested the second respondent to consider the hard copy of VAT Certificate submitted by the petitioner and reevaluate the packages. In spite of the same, the second respondent did not take any action, and therefore, the present writ petition is filed.

The learned Assistant Government Pleader for Panchayat Raj on instructions submits that the writ petition is premature and that the second respondent has forwarded all the tenders received by him to the Chief Engineer, P.R.Division, for further necessary action and even before a decision is taken, the present writ petition is filed. The learned Assistant Government Pleader also submits that the condition imposed for submission of the VAT Certificate is mandatory condition and if the same is not complied with by the tenderer by duly uploading the same, the prequalification/technical bid is liable for disqualification.

The second respondent invited tenders for the work on e-procurement platform. As per the tender notice, every contractor is required to submit as many as 13 documents. Except 3 documents, it is mandatory to submit all other documents. APGST/VAT or CST document has to be submitted by every tenderer and it is mandatory. Even according to the petitioner, though the VAT certificate was uploaded, the same was not downloaded. Whether or not there was any lapse in uploading the VAT Certificate, the fact remains that a certificate, which is required to be submitted as a mandatory condition was not submitted, and therefore, if the technical bid of the petitioner is rejected, the same cannot be termed as illegal.

In **West Bengal Electricity Board v. Patel Engineering Corporation** the Supreme Court considered the similar questions and held that the rule of transparency and fairness requires that all conditions of tender had to be followed strictly, unless specifically exempted. The relevant observation made therein is as follows.

> … The degree of the care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant-respondent Nos. 1 to 4 and respondent Nos. 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfill prequalification alone are invited to bid, adherence to the instructions cannot be given a go-bye by branding it as a pedantic approach otherwise it will encourage and provide scope for

discrimination, arbitrariness and favouritism which are totally opposed to the Rule of law and our constitutional values. **The very purpose of issuing rules/instructions is to ensure their enforcement lest the Rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubt in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the Rules, it has to be done strictly in compliance with the Rules. We have, therefore, no hesitation in concluding that adherence to ITB or Rules is the best principle to be followed, which is also in the best public interest.**

(emphasis supplied)

Following the decision of the Supreme Court, this Court holds that there is no illegality or infirmity in the action of the second respondent in rejecting prequalification/technical bid of the petitioner. The Writ Petition is therefore, dismissed. No costs.

_____

(V.V.S.RAO, J)

25-11-2005.

vs